No. 87- , Original

SUPREME COURT OF THE UNITED STATES

October Term, 1980

STATE OF CALIFORNIA,
Plaintiff,

vs.

STATE OF TEXAS,
Defendant.

ACTION IN ORIGINAL JURISDICTION

MOTION FOR LEAVE TO FILE COMPLAINT, COMPLAINT AND SUPPORTING BRIEF

GEORGE DEUKMEJIAN
Attorney General of the
State of California

R. H. CONNETT
Assistant Attorney General
RODERICK E. WALSTON
GREGORY K. WILKINSON
CHARLES W. GETZ IV
DAVID HAMILTON
MARY HACKENBRACHT
M. ANNE JENNINGS
Deputy Attorneys General
Attorneys for Plaintiff

6000 State Building
San Francisco, CA 94102
Telephone: (415) 557-3920

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STATE OF CALIFORNIA,

Plaintiff,

v.

STATE OF TEXAS,

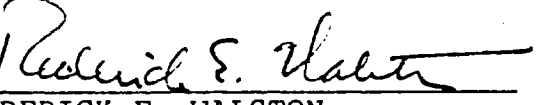
Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT

The State of California, appearing by its Attorney General George Deukmejian, respectfully requests leave of this Court to file the Complaint submitted herewith against the State of Texas. The State of California

seeks to bring this suit under authority of Article III, Section 2, Clause 2 of the U. S. Constitution and under authority of 28 U.S.C. § 1251(a)(1).

GEORGE DEUKMEJIAN, Attorney General
of the State of California
R. H. CONNETT
Assistant Attorney General
RODERICK E. WALSTON
GREGORY K. WILKINSON
CHARLES W. GETZ IV
DAVID HAMILTON
MARY HACKENBRACHT
M. ANNE JENNINGS
Deputy Attorneys General

By 
RODERICK E. WALSTON
Deputy Attorney General

Attorneys for Plaintiff
State of California

GEORGE DEUKMEJIAN, Attorney General
of the State of California
R. H. CONNETT
Assistant Attorney General
RODERICK E. WALSTON
GREGORY K. WILKINSON
CHARLES W. GETZ IV
DAVID W. HAMILTON
MARY HACKENBRACHT
M. ANNE JENNINGS
Deputy Attorneys General
6000 State Building
San Francisco, CA 94102
Telephone: (415) 557-3920

Attorneys for Plaintiff
State of California

UNITED STATES SUPREME COURT

STATE OF CALIFORNIA, Plaintiff,	NO. _____, Original
v.	COMPLAINT FOR INJUNCTIVE AND
STATE OF TEXAS, Defendant.	DECLARATORY RELIEF

The State of California brings this action against the State of Texas, to restrain Texas from restricting the movement in interstate commerce of food

products grown in California. Plaintiff State of California alleges as follows:

ACTION AND JURISDICTION

I

1. This is an action for injunctive and declaratory relief by the State of California against the State of Texas.

II

2. This Court has original and exclusive jurisdiction of this controversy pursuant to Article III, Section 2, Clause 2 of the United States Constitution, and pursuant to 28 U.S.C. § 1251(a)(1).

PARTIES

3. The STATE OF CALIFORNIA is a sovereign state of the United States of America, and was admitted into the Union on September 9, 1850.

4. The STATE OF TEXAS is a sovereign state of the United States of America, and was admitted into the Union on December 29, 1845.

NATURE OF THE CONTROVERSY

5. The Mediterranean fruit fly, Ceraltitis capitata Wiedeman ("Medfly"), is a pest that is destructive to many classes of fruits and vegetables, including citrus fruits. The female fly lays 10-20 eggs under the skin of the fruit, causing the fruit to become discolored and mushy. The fruit often ripens prematurely, and falls to the ground. The maggots then leave the fruit, enter the soil on the ground, and turn into pupae. After a few days, the pupae hatch into adults and fly away. The Medfly has a very short life cycle, which permits the rapid development of serious outbreaks. The Medfly can cause serious economic losses to large regions, including complete loss of crops. It is presently found in most continents of the world.

6. California has been invaded by the Medfly three times in recent years. The

first infestation was discovered in the Los Angeles area in 1975. The infestation, which covered 35 square miles, was eradicated by the combined action of state and county officials. The second infestation was discovered in the Los Angeles area on June 5, 1980. The infestation was again eradicated by the combined action of state and county officials, and the last fly was trapped on July 15, 1980. The third infestation, which is the subject of this action, was discovered in parts of Santa Clara County and Alameda County on June 5, 1980. This infestation has existed longer, and is more pervasive, than the other infestations described above.

CALIFORNIA ERADICATION AND QUARANTINE PROGRAM

7. On June 6, 1980, the California Department of Food and Agriculture (CDFA)

adopted an eradication program for the Medfly infestation in Santa Clara and Alameda Counties. See California Administrative Code, Title 3, § 3591.5. Under this eradication program, various methods are provided for the eradication of the Medfly from fruits and vegetables in the infested area. These methods include the use of pesticide sprays, liberation of millions of sterile male flies which breed with fertile female flies but produce no offspring, and removal of host fruits and vegetables in which eggs might mature.

8. On October 22, 1980, CDFA adopted a quarantine on the movement of certain fruits and vegetables grown in the infested regions of Santa Clara and Alameda Counties. See California Administrative Code, Title 3, § 3406. Under this quarantine, all fruits and vegetables grown within the quarantine area which might

serve as hosts of the Medfly cannot be moved from the area until such fruits and vegetables have been treated by a method approved by the Director of the CDFA. The Director has approved the movement of such fruits and vegetables only if they have been treated by fumigation or cold storage. The fumigation consists of application of ethyl dibromide or methyl bromide, depending on the type of fruit or vegetable.

9. The quarantine area established by CDFA encompasses approximately 500 square miles in Santa Clara and Alameda Counties, including a 50-square mile area that constitutes the core area of the infestation. The quarantine area thus includes a large buffer zone surrounding the immediate infestation area, to guard against the possibility that the infestation might unknowingly spread beyond

the core area. The quarantine line was established under agreement with federal, state and county officials. The quarantine line was drawn in appreciation of the fact that California, with its important agricultural industry, has the most to lose if the quarantine is not fully effective.

10. State, federal and county officials have undertaken a vigorous program to eradicate the Medfly from the infested area in Santa Clara and Alameda Counties. On December 24, 1980, Governor Edmund G. Brown, Jr., proclaimed a state of emergency with respect to the Medfly infestation. This emergency program has been implemented by personnel from various state and county agencies. Several hundred members of the California Conservation Corps and other agencies have stripped all host fruit from trees within the 50-square-mile core area, and

eventually collected approximately 2000 tons of host fruit. Additionally, bait spray has been applied to all host foliage within the core area, and insecticides have been sprayed on the ground as a soil drench to kill larvae entering the soil and flies emerging from the pupae. Every resident in the core area has been personally contacted, or has otherwise received notice, advising of the schedule for the removal of host plants from each such residence. Ground spraying is continuing at this time, and is scheduled to continue at least until the first week of March 1981. Approximately 100 million sterile male flies are being released each week to attract fertile female flies. The eradication program has received widespread local, regional and national publicity, and has received support both from the public and the California agricultural industry.

The total cost of the eradication program to date has been approximately $15 million. No flies or maggots have been found in the core area since January 22, 1980.

FEDERAL QUARANTINE PROGRAM

11. On July 25, 1980, the U.S. Department Agriculture (USDA) adopted its own quarantine program relating to the Medfly infestation of parts of Santa Clara and Alameda Counties. The quarantine was adopted pursuant to the Federal Plant Pest Act, 7 U.S.C. §§ 150aa-150jj. See 45 Fed.Reg. 50318-50324 (July 29, 1980). The Medfly infestation is a dangerous plant disease, which is new or not theretofore widely prevalent or distributed within or throughout the United States, and the Secretary of Agriculture so determined. Id.

12. Under the USDA quarantine program, certain fruits and vegetable grown in the

infested area cannot be moved in interstate commerce in the absence of a certificate or permit issued by the USDA. Id. at 50322, §331.1-3. The USDA cannot issue such a certificate or permit unless the fruit or vegetable has been treated by fumigation or cold storage. Id. at 50322, 50324, §§331.1-3, 331.1-9. The fumigation, to the extent applicable, must consist of application of ethyl dibromide or methyl bromide, depending on the type of fruit or vegetable. Id.

TEXAS QUARANTINE PROGRAM

13. On February 17, 1981, Reagan V. Brown, Texas Agriculture Commissioner, acting on behalf of the State of Texas, issued a public statement declaring the promulgation of an emergency order requiring treatment of shipments of certain fruits and vegetables from California because of the Medfly infestation in California. According to the statement,

enforcement of the order is to commence on on March 1, 1981.

14. Under the Texas quarantine program, each shipment of fruits and vegetables from California must be accompanied by an official certificate of treatment, and each box or package must be stamped with the statement that the contents have been treated in compliance with the Texas requirements. According to the statement, ethylene dibromide and methyl bromide are to be used to fumigate the fruits and vegetables. Some of the fruits and vegetables, according to the statement, must be treated by cold storage in order to kill any eggs or larvae.

15. Unlike the California quarantine program and the federal quarantine program described above, the Texas quarantine program prohibits or restricts the movement of fruits and vegetables grown anywhere in

California, and specifically outside the quarantine areas established under the California and federal programs.

16. California is further informed and believes that Texas, acting under its quarantine program, intends to halt the shipment of untreated fruits and vegetables transported from California through Texas to markets in the southern and eastern portions of the United States, even though such products will not be sold or consumed in Texas. These southern and eastern markets constitute a substantial portion of California's export market for fruits and vegetables, and the Texas quarantine will thus substantially impede the export of fruits and vegetables from California to destinations other than Texas.

PREEMPTION

17. Under the Federal Plant Pest Act, 7 U.S.C. §§ 150aa-150jj, and the Federal

Plant Quarantine Act, 7 U.S.C. §§ 151-167, the USDA's regulations preempt the Texas quarantine program, as said program was established by the above-described order issued by the Texas Commissioner of Agriculture. Therefore, the Texas quarantine program is invalid to the extent that it prohibits or restricts the movement in interstate commerce of fruits and vegetables grown outside the infested areas of California.

BURDEN ON INTERSTATE COMMERCE

18. The Texas quarantine program imposes an unreasonable burden on interstate commerce, and is thus in violation of Article I, Section 8, Clause 3 of the U.S. Constitution. The Texas quarantine program unreasonably restricts the free flow of fruits and vegetables from California that originate in areas beyond the quarantine areas established by

California and the United States. There is no evidence of any kind that fruits and vegetables grown beyond the quarantine areas established by California and the United States have been infested, or are in danger of being infested, by the Medfly. Further, fruits and vegetables grown in the area quarantined by California and the United States comprise only about 1% of California's total production of fruits and vegetables. Therefore, the Texas quarantine effectively restricts the movement in interstate commerce of the remaining 99% of California's production of fruits and vegetables, even though such fruits and vegetables are grown beyond the infested area and even though California and the United States are currently restricting the movement of the additional 1% of fruits and vegetables grown in California. Accordingly, the quarantines

established by California and the United States are sufficient to prevent the spread of the Medfly, and thus to protect the interests of Texas and other states which receive shipments of products from California. For these reasons, the Texas quarantine program is unnecessary to protect legitimate health, welfare and safety concerns of the State of Texas.

19. The Texas quarantine program imposes an unreasonable burden on interstate commerce in that it unnecessarily burdens California's agricultural industry, which is a major factor in California's economy. Agriculture is the largest industry of the State of California, generating total cash receipts in 1979 of $12.1 billion. Fruits and vegetables comprise a significant part of California's agricultural economy, generating total cash receipts in 1979 of

$5 billion. About 75-80% of fruits and vegetables grown in California are exported in interstate or international commerce. Therefore, Texas' quarantine results in a severe burden upon California's agricultural economy. This burden is enhanced by the fact that Texas, under its quarantine, intends to restrict the movement not only of fruits and vegetables destined for Texas markets, but also fruits and vegetables transported through Texas to other markets in states in the southern and eastern parts of the United States. Further, the Texas quarantine might encourage other states and nations to adopt similar quarantines. For all these reasons, the Texas quarantine has, and will continue to have, a significant, adverse effect upon California's agricultural industry, and upon California's economy.

20. Texas' quarantine program, in requiring fumigation and/or cold storage of fruits and vegetables grown outside the quarantine areas established under the California and federal quarantine programs, will have an unnecessarily burdensome effect upon California's agricultural industry. To require such treatment of such fruits and vegetables will increase the time within which such products can be placed into interstate commerce, and thus will shorten the shelf life of such perishable products. Further, California's agricultural industry lacks the physical facilities and personnel necessary to provide such treatment of such fruits and vegetables, and can only acquire such facilities with the expenditure of substantial costs and after a considerable period of time. Since these costs will necessarily be passed on to consumers, the

Texas quarantine program may lead to substantially higher consumer prices for fruits and vegetables in other states, which depend heavily on the importation of fruits and vegetables from California.

21. For the above reasons, there exists a justiciable case and controversy between the State of California and the State of Texas.

PRAYER

WHEREFORE, the State of California prays for relief as follows:

(1) For an order granting the State of California leave to file its Complaint for Injunctive and Declaratory Relief herein;

(2) For a preliminary and permanent injunction restraining the State of Texas and its officials, agents, and employees, from prohibiting or restricting the movement in interstate commerce, and into and through the State of Texas, of fruits

and vegetables that are grown in California beyond the boundaries of the quarantine programs established by California and the United States, as the result of the infestation of the Mediterranean fruit fly in certain areas of the State of California;

(3) For a declaratory judgment that the quarantine program established by the State of Texas, in prohibiting and restricting the movement in interstate commerce of fruits and vegetables grown beyond the quarantine areas established by California and the United States, is in violation of the U.S. Constitution, Article I, Section 8, Clause 3, in that it places an unreasonable burden on interstate commerce, and further that said Texas quarantine program is invalid in that it has been preempted by the congressional enactment of the Federal Plant Pest Act, 7 U.S.C. §§ 150aa-150jj;

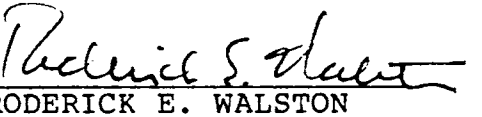
(4) For a temporary restraining order prohibiting the State of Texas, and its officials, agents, and employees, from prohibiting or restricting the movement in interstate commerce, and into and through the State of Texas, of fruits and vegetables that are grown in California outside the boundaries of the quarantine programs established by California and the United States, which temporary restraining order is to remain in effect until the Court acts on the motion for preliminary injunction submitted by plaintiff State of California herein;

(5) For plaintiff's costs of suit herein; and

(6) For such other relief as may be proper.

Respectfully submitted,

GEORGE DEUKMEJIAN, Attorney
General of the State of
California
R. H. CONNETT
Assistant Attorney General
RODERICK E. WALSTON
GREGORY K. WILKINSON
CHARLES W. GETZ IV
DAVID W. HAMILTON
MARY HACKENBRACHT
M. ANNE JENNINGS
Deputy Attorneys General

By 
RODERICK E. WALSTON
Deputy Attorney General

Attorneys for Plaintiff
State of California

No. _____, Original

SUPREME COURT OF THE UNITED STATES

October Term, 1980

STATE OF CALIFORNIA,

Plaintiff,

v.

STATE OF TEXAS,

Defendant.

BRIEF IN SUPPORT OF (1) MOTION FOR LEAVE TO FILE COMPLAINT, (2) APPLICATION FOR TEMPORARY RESTRAINING ORDER AND (3) MOTION FOR PRELIMINARY INJUNCTION

GEORGE DEUKMEJIAN, Attorney General
of the State of California

R. H. CONNETT
Assistant Attorney General

RODERICK E. WALSTON
GREGORY K. WILKINSON
CHARLES W. GETZ IV
DAVID HAMILTON
MARY HACKENBRACHT
M. ANNE JENNINGS
Deputy Attorneys General
Attorneys for Plaintiff

QUESTIONS PRESENTED

(1) Should the Court grant California leave to file its complaint under the Court's original jurisdiction?

(2) Should the Court grant California's application for temporary restraining order and motion for preliminary injunction?

The merits of the case raise the following additional questions:

(1) Is Texas preempted from restricting the movement in interstate commerce of fruits and vegetables grown in California, by virtue of the fact that the U.S. Department of Agriculture has adopted a quarantine program restricting movement of such products under authority of the Federal Plant Pest Act, 7 U.S.C. §§ 150aa-150jj?

(2) Does the quarantine established

by Texas, in restricting the movement in interstate commerce of fruits and vegetables grown in California, impose an unreasonable burden on interstate commerce in violation of Article I, Section 8, Clause 3, of the U. S. Constitution?

PARTIES

The plaintiff is the State of California. The defendant is the State of Texas.

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JURISDICTION

This Court has original and exclusive jurisdiction of this case under Article III, Section 2, Clause 2 of the U. S. Constitution, and under 28 U.S.C. § 1251(a)(1).

FEDERAL LAWS INVOLVED

This case involves an interpretation of the Federal Plant Pest Act, 7 U.S.C. §§ 150aa-150jj, and the Federal Plant Quarantine Act, 7 U.S.C. §§ 151-167, and particularly section 8 of the latter Act, 7 U.S.C. § 161. A copy of section 8 appears in an appendix attached hereto.

STATEMENT OF THE CASE

1. Nature of the Controversy

This is an action by the State of California against the State of Texas, arising out of a quarantine program established by Texas to restrict importation

into Texas of certain fruits and vegetables grown in California.

In or around June 1980, California discovered that the Mediterranean fruit fly (Medfly) had infested parts of Santa Clara and Alameda Counties in California. The Medfly poses a serious threat to California's agricultural economy, which is the State's major industry.

California has adopted, and is currently vigorously enforcing, a program to eradicate and quarantine the Medfly. [1/] Under this program, any fruit or vegetable

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1. The California quarantine program was promulgated as part of the California Administrative Code, Title 3, § 3406. The California eradication program was promulgated as part of the same code, at Title 3, § 3591.5. Copies of these regulations are attached as subexhibit A-2 to the Affidavit of Richard E. Rominger, submitted under separate cover as Exhibit A.

grown in the infested area which might serve as a host to the Medfly canot be exported outside the infestation area, until the product has been treated by fumigation or cold storage. The quarantine area includes not only a 50-square-mile core area, but also a larger buffer zone; the total quarantine area comprises approximately 500 square miles.

California has undertaken a vigorous program to eradicate the Medfly from the infested area. On December 24, 1980, Governor Edmund G. Brown, Jr., declared a state of emergency. The emergency program has been carried out by personnel from several State and county agencies. Under this program, all host fruit have been stripped from trees within the core area, which constitutes approximately 2000 tons of host fruit. Additionally, bait spray has been applied to all host foliage within the

core area. Also insecticides have been sprayed on the ground as a soil drench to kill larve entering the soil and flies emerging from the pupae.

Additionally, every resident in the core area has been personally contacted, or has otherwise received notice, advising of the schedule for the removal of host plants from each such residence. Ground spraying is continuing at this time. Approximately 100 million sterile male flies are released each week to attract fertile female flies. California's eradication program has received widespread publicity, and has received support both from the public and California's agricultural industry. No flies or maggots have been found in the core area since January 22, 1981.

The U.S. Department of Agriculture (USDA) established its own quarantine program

on July 25, 1980, under authority of the Federal Plant Pest Act, 7 U.S.C. §§ 150aa-150jj. See 45 Fed. Reg. 50318-50324 (July 29, 1980).[2/] The quarantine area established under the USDA program is similar to that established under California's program. Id. Under the USDA quarantine, certain fruits and vegetables cannot be moved in interstate commerce without a permit or certificate from the USDA, which is forthcoming only if the product has been treated by fumigation or cold storage. Id. at 50322, 50324, §§331.1-3, 331.1-4, 331.1-9.

On February 17, 1981, the State of Texas, through its Agriculture Commissioner, issued a public statement declaring the promulgation of an emergency order, effective

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2. A copy of the USDA regulations are attached as subexhibit A-3 to the Affidavit of Richard E. Rominger, submitted as Exhibit A.

March 1, 1981, prohibiting the movement into Texas of certain fruits and vegetables grown in California, unless such products have been treated by fumigation or cold storage. [3/] This order restricts fruits and vegetables grown anywhere in California, and thus effectively establishes a larger quarantine area than that established under the quarantines of California and the United States. It effectively restricts the movement of certain products that are unrestricted by the California and federal programs.

2. Nature of Relief Sought

In this action, California attempts to prohibit Texas from restricting the movement in interstate commerce of fruits and

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3. A copy of the Agriculture Commissioner's statement is attached as subexhibit A-5 to the Affidavit of Richard E. Rominger, submitted as Exhibit A.

vegetables grown outside the quarantine areas established by California and the United States. California argues that the Texas quarantine is unlawful because (1), under the Federal Plant Pest Act, the quarantine adopted by the USDA preempts that adopted by Texas, and (2) Texas' quarantine places an unreasonable burden on interstate commerce in violation of the Commerce Clause in Article 1, Section 8, Clause 3 of the U.S. Constitution.

California thus moves that this Court grant leave for California to file its complaint under this Court's original jurisdiction. California also moves for a preliminary injunction, restricting Texas from enforcing its quarantine during the pendancy of this litigation. Finally, California applies for a temporary restraining order, restraining Texas from

enforcing its quarantine until this Court acts on our motion for preliminary injunction. This brief serves as the supporting document in support of all three applications and motions.

SUMMARY OF ARGUMENT

I

The Court should grant California leave to file its complaint under this Court's original jurisdiction because Texas' quarantine program will have a substantial, adverse impact upon California's agricultural economy, which is linked to the State's economic health. Thus, an actual controversy exists between the states.

II

The Court should grant California's application for interim relief, since (1) there is a substantial likelihood that California will prevail on the merits and (2)

the balance of relative harm weighs heavily in favor of California rather than Texas.

(a) There is a likelihood that California will prevail on the merits because Congress, by enactment of the Federal Plant Pest Act, has preempted state quarantines in instances where the Secretary of Agriculture has adopted his own quarantine. Further, the Texas quarantine places an unreasonable burden on interstate commerce, in that (1) the quarantine is not necessary to protect Texas' concerns for the public health, welfare and safety, in light of the existing quarantines established by California and the United States and, (2) the Texas quarantine places an unreasonable burden on California's economy, and particularly on its agricultural industry.

(b) For many of the same reasons described in II(a) above, the balance of

harm weighs heavily in favor of California rather than Texas. Since California and the United States have established a quarantine that restricts the movement of host fruits and vegetables from areas within or adjacent to the infested area, and since there is no evidence that any infestation has occurred in other areas of California, the Texas quarantine is unnecessary to protect Texas' interests. Moreover, as explained above, the Texas quarantine imposes a severe hardship on the California agricultural industry, which is the State's largest industry and the largest such industry in the nation.

ARGUMENT

I. THE COURT SHOULD GRANT LEAVE TO FILE COMPLAINT.

Under the U.S. Constitution, this Court has original jurisdiction of "all cases . . . in which a state shall be a party, . . ." U.S. Const., Art. III, §2, Cl. 2.

Congress has enacted legislation providing that this Court shall have "original and exclusive jurisdiction" of "all controversies between two or more States. . . . " 28 U.S.C. § 1251(a)(1). Since this is an action between two states, the Court's jurisdiction is both original and exclusive.

This Court has declined to exercise its original jurisdiction in actions between states, however, if it appears that the plaintiff state is attempting to protect purely private interests rather than its own sovereign interests. See, e.g., Pennsylvania v. New Jersey, 426 U.S. 660 (1976); Alabama v. Arizona, 291 U.S. 286 (1934). In such cases, the private parties that are the beneficiaries of the action have an alternative remedy in an action brought in federal district court. Therefore, the Court has held in such cases that the state is not

properly acting in a parens patriae capacity on behalf of its citizens.

This Court has had no difficulty, however, in concluding that a state is acting on behalf of its own legitimate interests in certain types of actions, and thus that a state has standing to maintain such actions in this Court. Such actions, for example, include boundary disputes, [4/] diversions of water from interstate streams, [5/] interstate air pollution, [6/] and interstate water pollution. [7/] We frankly concede, however, that the Court has been more hesitant to

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4. See, e.g., Rhode Island v. Massachusetts, 12 Pet. (37 U.S.) 657 (1838).

5. See, e.g., Kansas v. Colorado, 206 U.S. 46 (1907).

6. See, e.g., Georgia v. Tennessee Copper Co., 206 U.S. 230 (1907).

7. See, e.g., New York v. New Jersey, 256 U.S. 296 (1921).

exercise its original jurisdiction in cases, as here, involving economic injury. In such cases, the Court appears to require that the injury be of a sufficiently serious magnitude to warrant the conclusion that the state itself suffers the injury, and that the injury is not confined to private citizens of the state.

For example, in Georgia v. Pennsylvania, 324 U.S. 429 (1945), Georgia brought an action against Pennsylvania, claiming that a conspiracy in violation of the federal antitrust laws effectively resulted in discriminatory freight rates that impeded the growth of the State's economy. The Court upheld Georgia's standing to maintain the suit under the Court's original jurisdiction, stating:

> "The rights which Georgia asserts, parens patriae, are those arising from an alleged conspiracy of private persons

> whose price-fixing scheme, it is said, has injured the economy of Georgia." 324 U.S. at 447.

Later, the Court stated:

> "This is not a suit in which a State is a mere nominal plaintiff, individual shippers being the real complainants. This is a suit in which Georgia asserts claims arising out of federal laws and the gravamen of which runs far beyond the claim of damage to individual shippers." Id. at 452.

Thus, the Court indicated that,largely because of the magnitude of the injury to Georgia's economy, Georgia had standing to maintain its action in the Supreme Court.

Similarly, in Pennsylvania v. West Virginia, 262 U.S. 553 (1923), the Court held that two plaintiff states had standing to challenge legislation adopted by West Virginia which required natural gas producers of the latter state to give preferential treatment to consumers of the latter state. The Court stated that the plaintiff states

had standing to maintain their action because of the magnitude of the threatened injury upon the economic interests of both states. The Court stated:

> "The attitude of the complainant States is not that of mere volunteers attempting to vindicate the freedom of interstate commerce or to redress purely private grievances. Each sues to protect a two-fold interest -- one as the proprietor of various public institutions and schools whose supply of gas will be largely curtailed or cut off by the threatened interferences with the interstate current, and the other as the representative of the consuming public whose supply will be similarly affected. Both interests are substantial and both are threatened with serious injury." 262 U.S. at 591, 592.

On the other hand, in Pennsylvania v. New Jersey, 426 U.S. 660 (1976), the Court declined to exercise its original jurisdiction to hear an action brought by a plaintiff state that sought to recover taxes withheld from its own private parties. The Court stated that the state's own sovereign

interests were unaffected by the action, and that the state was merely acting on behalf of several of its private citizens. 8/

In this case, California is acting to protect its own sovereign interests, not

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8. Similarly, in Louisiana v. Texas, 176 U.S. 1 (1900), the Court declined to hear an action in which Louisiana alleged that Texas had placed on unlawful embargo on commerce originating in Louisiana, an embargo that Texas sought to justify on grounds that products in Louisiana had been contaminated by a yellow fever epidemic. The Court stated:

> "But in order that a controversy between states, justiciable in this court, can be held to exist, something more must be put forward than that the citizens of one state are injured by the maladministration of the laws of another." 176 U.S. at 22.

Thus, the Court stated that Louisiana, in order to obtain standing, must allege and show that its own sovereign or economic interests are injured, not simply that private citizens of the State are injured. The decision is thus inapposite here for the reason that, as we express more fully below, California has alleged in its complaint, and shown in its affidavits, that the Texas quarantine has a substantial effect on California's economy.

merely to represent the interests of its private agricultural industry. As the affidavits supplied under separate cover make clear, the agricultural industry is the largest industry in the state of California, and further is the largest agricultural industry of any state in the nation. It generated total revenues in 1979 of approximately $12.1 billion, of which $5 billion was generated by the fruits and vegetables industry. See Affidavit of Richard E. Rominger, Exhibit A, at p. 2, and also Subexhibit A-1 attached thereto, at p. 2. Approximately 75-80% of fruits and vegetables grown in California are exported in interstate commerce. See Affidavit of Scott D. Morse, Exhibit F. Therefore, California's agricultural industry is a major component of California's economy, and a major source of the nation's food supply. This case thus presents issues of serious economic

magnitude, in that it affects both State and national interests.

It cannot be expected that California's agricultural industry, if it were to bring a private action against Texas, would be able to adequately represent California's broad concerns in this case. Further, California lacks any other available forum to assert these broad concerns, for this Court has "exclusive" jurisdiction of an action between two states; therefore, California cannot maintain its action in a federal district court. For these reasons, we respectfully submit that this Court should exercise its original jurisdiction in this case, and grant California leave to file its complaint.

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II. THE COURT SHOULD GRANT CALIFORNIA'S APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION.

The federal courts, in determining whether to grant interim relief, examine the likelihood that the plaintiff will eventually prevail on the merits, the potential harm that will be sustained by the plaintiff if the court fails to grant such relief, and the potential harm that will be sustained by the defendant if the court grants such relief. As the Second Circuit recently stated:

> "One moving for a preliminary injunction assumes the burden of demonstrating either a combination of probable success and the possibility of irreparable injury or that serious questions are raised and the balance of hardships tip sharply in his favor." Charlie's Girls, Inc. v. Revlon, 484 F.2d 953, 954 (2d Cir. 1973). See also William Inglis & Sons Baking Co. v. ITT Continental Baking Co., Inc., 526 F.2d 86, 88 (9th Cir. 1976).

As we explain below, there is a substantial likelihood that California will prevail on

the merits in this action, and the balance of relative harm weighs heavily in favor of California.

A. There Is A Substantial Likelihood That California Will Prevail On The Merits.

1. The Texas Quarantine Has Been Preempted By The Quarantine Established By The U.S. Department Of Agriculture

Under the preemption doctrine, a state law is invalid under the preemption doctrine if (1) Congress has "occupied the field" that is the subject of the state law [9/] or (2) the state law is in conflict

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9. In commenting on whether Congress has "occupied the field," this Court has stated:

> "The scheme of federal regulation may be so pervasive as to make resonable the inference that Congress left no room for the States to supplement it. [Citations omitted.] Or an act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state

with a specific federal law. See, e.g., New York State Dept. of Social Services v. Dublino, 413 U.S. 405 (1973); Goldstein v. California, 412 U.S. 546 (1973); Rice v. Santa Fe Elevator Corp., 331 U.S. 218 (1947); Huron Portland Cement Co. v. City of Detroit, 362 U.S. 440 (1960); Florida Lime and Avocado Growers v. Paul, 373 U.S. 132, 142 (1963). Thus, if Congress has not occupied the field, it must be determined whether there is a conflict between federal and state laws on the same subject. If Congress has occupied the field, however, the state law is invalid regardless of whether it is consistent with the federal scheme.

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fn. 9 (cont.) laws on the same subject. [Citations omitted.] Likewise, the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose. [Citations omitted.]" Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947).

We recognize that the preemption doctrine should not be applied unless Congress manifests its intent with reasonable clarity. As this Court recently commented:

> "If Congress is authorized to act in a field, it should manifest its intention clearly. It will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so. The exercise of federal supremacy is not lightly to be presumed." (Emphasis added.) New York State Dept. of Social Sevices v. Dublino, 413 U.S. 405, 413 (1973). (Emphasis added.)

As we explain below, Congress has manifested its intent with reasonable clarity that it has occupied the field which Texas now seeks to regulate.

In 1912, Congress enacted the Federal Plant Quarantine Act ("Plant Act"), 7 U.S.C. §§ 151-167, which regulates the importation of nursery stock. The Act makes it unlawful to import, or move in interstate

commerce, any plant until a permit has been issued by the Secretary of Agriculture. 7 U.S.C. § 154. Under section 8 of the Act, the Secretary is specifically authorized to adopt a quarantine with respect to any state or portion thereof when he determines that such a quarantine is necessary "to prevent the spread of dangerous plant disease or insect infestation, new to or not theretofore widely prevalent or distributed within and throughout the United States." Id. at § 161. If the Secretary has established such a quarantine, it is unlawful to move any article specified in the quarantine order from the quarantine area "in manner or method or under conditions other than those prescribed by the Secretary of Agriculture." Id.

In 1957, Congress enacted the Federal Plant Pest Act (Pest Act), 7 U.S.C.

§ 150aa-150jj. This Act makes it unlawful to import, or move in interstate commerce, any plant pest without having obtained a permit from the Secretary of Agriculture. 7 U.S.C. § 150bb. The Act also provides that, as an emergency measure, the Secretary may quarantine or otherwise destroy any plant pest "new to or not theretofore known to be widely prevalent or distributed within and throughout the United States. . . ." Id. at § 150dd(a). Thus, the Pest Act supplements the Plant Act, in that it enlarges and extends the regulatory program established under the Plant Act. Accordingly, the two acts must be read in pari materia.

In Oregon-Washington R.R. and Nav. Co. v. Washington, 270 U.S. 87 (1926), this Court held that section 8 of the Plant Act effectively preempts state quarantine laws. In that case, Washington issued a quarantine

order which restricted the shipment into Washington of hay and alfalfa products from certain designated states, in order to prevent the spread of the alfalfa weevil in Washington. This Court invalidated the Washington order on grounds that, even though the Secretary of Agriculture had not established a quarantine order under the Plant Act, Congress had occupied the field by passage of the Act. Accordingly, it was held that the State order was preempted by the federal statute. The Court stated:

> "It is suggested that the states may act in the absence of any action by the Secretary of Agriculture; that it is left to him to allow the states to quarantine, and that if he does not act there is no invalidity in the state action. Such construction as that cannot be given to the Federal statute. The obligation to act without respect to the states is put directly upon the Secretary of Agriculture whenever quarantine in his judgment is necessary. When he does not act, it must be presumed that it is not necessary." 270 U.S. at 102-103.

Shortly thereafter, Congress amended section 8 of the Plant Act to restore part of the power which the states had lost. The amendment provides:

> "That until the Secretary of Agriculture shall have made a determination that such a quarantine is necessary and has duly established the same with reference to any dangerous plant disease or insect infestation, as hereinabove provided, nothing in this chapter shall be construed to prevent any State, Territory, Insular Possession, or District from promulgating, enacting, and enforcing any quarantine, prohibiting or restricting the transportation of any class of nursery stock, plant, fruit, seed, or other product or article subject to the restrictions of this section, into or through such State, Territory, District, or portion thereof, from any other State, Territory, or District promulgating or enacting the same, that such dangerous plant disease or insect infestation exists in such other State, Territory, District or portion thereof." 7 U.S.C. § 161.

Thus, the amendment authorizes a state to adopt a quarantine when the Secretary has not adopted his own quarantine.

Importantly, however, the amendment does not authorize a state to adopt a quarantine when the Secretary has adopted his own quarantine. In the latter situation, under this Court's decision in the Oregon-Washington case, the state is thus preempted from restricting the movement of plants in interstate commerce. Congress, in enacting the amendment, apparently perceived that the states should have the power to act in the face of secretarial inaction. Congress evidently believed, however, that, once the Secretary acts, the national interest requires that the Secretary's action supplants any action which a state might take with respect to the same plant. In this situation, Congress embraced the principle of national uniformity, rather than state and local diversity.

In this case, the Secretary of Agriculture has adopted a quarantine with

respect to the Medfly infestation in California. See 45 Fed. Reg. 50318-50324 (July 29, 1980). The quarantine was adopted pursuant to the Pest Act, which, as noted above, must be read in pari materia with the Plant Act, and with section 8 thereof. Under the Secretary's quarantine, the Secretary has prohibited the movement in interstate commerce of fruits and vegetables grown in the infested parts of Santa Clara and Alameda Counties in California, unless such products have been treated by fumigation or cold storage. Id. His program is thus substantially narrower than that of Texas, which would restrict the movement of fruits and vegetables grown anywhere in California.

More importantly, however, the Secretary's action, in promulgating the quarantine, effectively occupies the field, according to this Court's decision in the

Oregon-Washington case. Accordingly, his action preempts Texas' right to promulgate its own quarantine program. Whatever Texas' right to restrict the shipment of products in the absence of secretarial action, Texas has lost its right now that the Secretary has acted. 10/

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10. The Secretary's quarantine power applies only to interstate commerce, see 7 U.S.C. § 161, and thus does not prevent California from imposing its own quarantine on intrastate commerce. Further, the last proviso of section 161 provides that a state can adopt a quarantine that is parallel to, and not greater than, the quarantine adopted by the Secretary. Id. Therefore, Texas has the right to adopt a quarantine program that is similar to that adopted by the Secretary of Agriculture. At least one state, Florida, has adopted such a quarantine. See Affidavit of Richard E. Rominger, Exhibit A, at p. 4.

2. The Texas Quarantine Imposes An Unreasonable Burden On Interstate Commerce, And Thus Violates The Commerce Clause.

Additionally, the Texas quarantine imposes an unreasonable burden on interstate commerce, and is thus invalid uder the Commerce Clause of the U.S. Constitution, Art. I, § 8, Cl. 3. As the Court recently noted in Hughes v. Oklahoma, 441 U.S. 322 (1979), the Commerce Clause reflects the concern of the Constitution's framers that

> ". . . in order to succeed, the new union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation." 441 U.S. at 325-326.

Accordingly, this Court has interpreted the Commerce Clause not only as an authorization for congressional action, but also as a restriction on permissible state regulation. Hughes v. Oklahoma, supra; H.P. Hood & Sons,

Inc. v. DuMond, 336 U.S. 525 (1949); Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945).

In Pike v. Bruce Church, Inc., 397 U.S. 137 (1969), this Court recently described the scope and reach of the Commerce Clause, stating:

> "Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate comerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. . . .
>
> "If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities." 397 U.S. at 142.

The analysis in Pike has been expressly followed and applied in recent decisions of this Court. See e.g., Hughes v. Oklahoma, supra.

In applying the analysis, this Court has developed a three-part test. Under this test, inquiry must be made to determine (1) whether the challenged state law applies even-handedly to all commerce with only "incidental" effects on interstate commerce, or instead discriminates against interstate commerce on its face or in practical effect; (2) whether the state law serves a legitimate local purpose; and (3) whether alternative means are available to serve local purposes with a lesser impact on interstate commerce. See Hughes v. Oklahoma, supra at 322, 336. Further, although the burden of showing discrimination falls on the party challenging the state law,

> "[W]hen discrimination against commerce is demonstrated, the burden falls on the State to justify it both in terms of the local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake." Hughes v. Oklahoma, supra at 336. See also Hunt v.

Washington Apple Advertising Commission, 432 U.S. 333, 353 (1977).

As we will see, the Texas quarantine fails to meet the three-fold test formulated by this Court. Consequently, Texas cannot sustain the burden which it bears in this case, and hence its quarantine is invalid.

(a) Discrimination on Face of Quarantine Order.

Although, as we explain below, the Texas quarantine has a discriminatory effect on interstate commerce, it is also discriminatory on its face. Indeed, the entire focus of the quarantine is on interstate commerce originating in California. The quarantine expressly applies only to interstate shipment of fruits and vegetables from California. The quarantine does not apply to shipments from other states, or to intrastate shipments.

Thus, since the Texas quarantine

is discriminatory on its face, the remaining inquiries -- into the purpose of the regulation and its burden on interstate commerce -- are necessarily more strict. As this Court has stated:

> "Such facial discrimination by itself may be a fatal defect, regardless of the State's purpose, because 'the evil of protectionism can reside in legislative means as well as legislative ends. At a minimum such facial discrimination invokes the strictest scrutiny of any purported legitimate local purpose and of the absence of non-discriminatory alternatives.'" Hughes v. Oklahoma, supra at 337; Philadelphia v. New Jersey, 437 U.S. 617, 624 (1977).

As we shall see, the Texas quarantine is unable to withstand such scrutiny. The asserted local purpose is suspect in light of quarantines already imposed by Califoria and the United States, and the purpose of the quarantine -- when measured against available alternatives -- is outweighed by the burden upon interstate commerce.

(b) Lack of Adequate Local Purpose.

The Texas quarantine fails to meet the second part of the three-fold test formulated by this Court, in that it fails to serve a necessary local purpose. The asserted purpose of the Texas quarantine is to prevent the spread of Medfly infestation into Texas as a result of the importation of fruits and vegetables from California. This purpose, however, is already served by the quarantines established by California and the United States. As noted earlier, California now requires treatment, by fumigation or cold storage, of all host fruits and vegetables grown in the core area and the surrounding buffer zone, which includes a 500-square-mile area. 11/

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11. The California quarantine provides that all fruits and vegetables grown within

Moreover, the USDA has imposed a similar quarantine upon the movement of such fruits and vegetables in interstate commerce. See 45 Fed. Reg. 50318-50324 (July 29, 1980). There is no evidence that the Medfly has spread, or threatens to spread, beyond the core area that is governed by the California

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fn. 11. (cont.) the two counties "shall not be moved from the area under quarantine" unless (1) they are treated in a manner approved by the Director of the California Department of Food and Agriculture, or in the case of certain low risk crops, unless the items are "properly inspected." 3 Cal.Admin. Code, §§ 3406(d)(1), 3406(d)(3). The term "properly inspected" is defined as follows:

> "Properly inspected is defined as meaning that at least one-half of one percent of the material to move shall be used as a sample and this sample shall be cut and closely inspected for larvae of the Mediterranean fruit fly before being moved from the quaratine area. In addition, the sample taken shall be a biased one as it shall be made up as much as possible of overripe, broken, and decayed material." Id. at § 3406(d)(3)(B).

and federal quarantines. See Affidavit of Roy T. Cunningham, Exhibit C, at p. 9.

Thus, the only purpose served by the Texas quarantine is (1) to bar the importation into Texas of fruits and vegetables from areas in California where no threat of infestation exists and (2) to bar the importation into Texas of fruits and vegetables from areas in California which are already under the quarantine programs of California and the United States. The Texas quarantine is thus unnecessary to the extent that it extends beyond the existing State and federal quarantines, and redundant to the extent that it does not.

Significantly, the quarantines established by California and the United States are tailored to the biological area which the Medfly has actually infested, or threatens to infest. Conversely, the Texas

quarantine is linked to the political boundaries of California, which have no significant relationship to the biological area of infestation. It is anomalous that Texas would restrict the shipment of citrus fruits grown in southern California, several hundred miles from the area of infestation, but would not similarly restrict the shipment of citrus fruits grown a few miles eastward in Arizona. This anomaly, we believe, shows that the Texas quarantine is not tailored to the specific exigencies of the Medfly problem, and thus does not serve a valid local purpose.

(c) Effect on Interstate Commerce.

Finally, the Texas quarantine has a substantial, adverse effect on interstate commerce. In 1979, the California agricultural industry achieved sales of approximately $12.1 billion. See Affidavit of Richard E. Rominger, Exhibit A, at p. 2.

The amount of sales attributed to Santa Clara County, where the Medfly infestation is largely contained, was approximately $123.5 million during the same period. Id. at subexhibit A-1, at p. 12. Thus, the agricultural production attributed to the area of infestation is only about 1% of the State's entire agricultural production. Stated differently, about 99% of the State's agricultural production takes place beyond the area of infestation. Thus, Texas' quarantine applies to all fruits and vegetables grown in California even though 99% of such products are clearly grown beyond the area of infestation. Moreover, as noted above, the remaining 1% of the products grown in the area of infestation are subject to the quarantines established by California and the United States. The Texas quarantine is thus excessive in its breadth.

The Texas quarantine will also have a broad, adverse national impact. The California agricultural industry is the largest such industry in the nation, and is a major source of the nation's food supply. A substantial portion of the fruits and vegetables consumed nationally are grown in California beyond the area of infestation, but nonetheless must be fumigated under the Texas quarantine program. For example, California supplied 84.2% of the nation's avacado supply in 1979, and most of the supply is grown in southern California, far from the area of infestation. See Affidavit of Richard E. Rominger, Exhibit A, at p. 2. California supplied nearly all of the nation's plum supply in 1979, and this supply is primarily grown in central California counties located far from the area of infestation. Id. California

supplied 91.2% of the nation's grape supply in 1979, and the entire supply was grown beyond the area of infestation. Id., and subexhibit A-1, at p. 6. Thus, the Texas quarantine program would apply to many California products that are primarily grown beyond the area of infestation, and that are primarily consumed in interstate markets.

Significantly, the State of Florida, which has a substantially larger citrus fruit industry than Texas, has determined not to place a quarantine upon fruits and vegetables from California. See Affidavit of Richard E. Rominger, Exhibit A, at p. 4. Florida officials have determined, after consultation with California authorities, that the quarantine programs of California and the United States are adequate to prevent spread of infestation. Id. In short, Florida has determined that its own

interests are protected without the imposition of a quarantine upon fruits and vegetables grown anywhere in California, which suggests that Texas' interests are also protected under this result.

The economic costs of requiring California's agriculture industry to comply with the Texas quarantine are staggering. Such costs consist of (1) the cost of providing fumigation and cold storage treatment of affected host plants, and (2) the dollar value of crops which would be damaged by such treatment. See Affidavit of Gordon A. Rowe, Exhibit E, at pp. 5-6. The first category includes the cost of facilities for the fumigation and cold storage of host plants. Id. at p. 5. The total cost of needed facilities for 20 affected host plants is estimated to be $497 million. Id. In addition, the Texas quarantine would also require annual costs

for the purchase of chemical supplies for fumigation purposes, labor costs, energy costs, and other supplies required for the treatment program. These additional annual costs are estimated to be $38 million. Id. Thus, the total cost for complying with the Texas quarantine during the first year is approximately $535 million.

The second category of costs associated with the Texas quarantine involves the value of crops which would be damaged by treatment. Since post-harvest treatment of fresh produce is not 100% effective, the California agricultural industry would be expected to lose a significant portion of the harvested crop as the result of gas burn, scald, or other fumigation problems. Id. at pp. 5-6. Additional portions of the harvested crop would be lost by increased deterioration of the shipped

product. Id. at p. 6. Although it is impossible to precisely predict the dollar amount of this damage, the best estimates are a range from $48 million to $334 million. Id.

Because of the direct costs and crop damage associated with the Texas quarantine, consumers in California and around the United States would be expected to pay substantially higher prices for fruits and vegetables as a result of the quarantine. California provides a large part of the nation's supply of fruits and vegetables. See Affidavit of Gordon A. Rowe, Exhibit E, at pp. 6-7. Accordingly, the increased direct costs of complying with the Texas quarantine would result in substantially higher consumer prices, although the exact amount of the increase cannot be accurately determined at this time. Id. Assuming, however, that the

Texas quarantine results in the loss of 5-10% of California's fruits and vegetables as the result of crop damage alone, consumer prices would be expected to increase by 3-8% annually. Id.

Further, the Texas quarantine would apparently apply to fruits and vegetables which are shipped from California through Texas to markets in other states. See Affidavit of Richard E. Rominger, Exhibit A, at p. 2. A substantial portion of such products pass through Texas on the way to other markets. For example, approximately 75% of the fruits and vegetables shipped by one random California producer to eastern markets are routed through Texas. See Affidavit of Walter E. Tindell, Exhibit G, at p. 3. Such products would have to be routed through other states in order to reach markets located east of Texas, such as

Louisiana and Florida. The economic costs of routing such shipments through other states would be substantial.

For the above reasons, the Texas quarantine has an adverse impact on interstate commerce that is not justified by the local interests which Texas is ostensibly seeking to protect. This case is thus similar to that in Railroad Co. v. Husen, 95 U.S. 465 (1877). There, the State of Missouri had adopted a statute which banned the importation of Texas, Mexican or Indian cattle during certain months of the year. The statute applied to all cattle regardless of whether they were diseased, and to all shipments regardless of whether they were unloaded in Missouri. The Court struck down the statute, commenting:

> "The reach of the statute was far beyond its professed object, and far into the realm which is within the

> exclusive jurisdiction of Congress." 95 U.S. at 472. See also Dean Milk v. Madison, 340 U.S. 349 (1951); Baldwin v. Seelig, 294 U.S. 511 (1935).

As in Husen, the Texas quarantine fails to distinguish between products grown in the infested area and crops grown elsewhere, and between products destined for Texas markets and products destined for other markets. As in Husen, the Texas quarantine thus imposes an unlawful burden on interstate commerce.

This case is also similar to that in Dean Milk Co. v. Madison, 340 U.S. 349 (1951). There, the Court stated:

> "In thus erecting an economic barrier protecting a major local industry against competition from without the State, Madison plainly discriminates against interstate commerce. This it cannot do, even in the exercise of its unquestioned power to protect the health and safety of its people, if reasonable nondiscriminatory alternatives, adequate to conserve legitimate local interests, are available. Cf. Baldwin v. Seelig, Inc., supra, at 524; Minnesota v.

Barber, 136 U.S. 313, 328 (1890)."
340 U.S. at 354. (Emphasis added.)

Here, "unreasonable nondiscriminatory alternatives" are available to Texas for the protection of "the health and safety of its people." Texas could adopt the kind of quarantine already adopted by California and the United States, which would require that fruits and vegetables entering Texas from the area of infestation must be treated by fumigation or cold storage or, with respect to low-risk crops, must be "properly inspected" by Texas officials. Cf. 3 Cal.Admin. Code § 3406. This alternative remedy would satisfy Texas' legitimate concerns for the health and safety of its citizens, and also minimize the burden on interstate commerce that results from the existing Texas quarantine.

For the above reasons, the Texas

quarantine is unconstitutionally excessive in its scope and reach. It is not reasonably related to the protection of local concerns in Texas, since it restricts the movement in interstate commerce of products that are grown far beyond the area of infestation in California. Moreover, Texas' concerns are satisfied by the existing quarantines established by California and the United States. If Texas believes that it must take independent action to protect its own interests, it could tailor its quarantine to the biological area of infestation, as California, Florida and the United States have done. In its present form, the Texas quarantine places an unreasonable burden on interstate commerce, and thus violates the constitutional proscription against such burdens.

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B. The Balance Of Relative Harm Weighs Heavily In Favor Of California Rather Than Texas.

In our above discussion of the effects on interstate commerce, we argued that the Texas quarantine is not necessary to protect Texas' concerns for the health and safety of its citizens, and has an unreasonable effect on interstate commerce. We will not repeat this discussion here. Instead, we argue simply that, for the same reasons that the Texas quarantine unconstitutionally burdens interstate commerce, the balance of harm in this case weighs heavily in favor of California rather than Texas.

As discussed above, the existing quarantines established by California and the United States apply to fruits and vegetables grown in the core area of the infestation, and also a surrounding buffer zone. Thus, these quarantines adequately protect against

the spread of the Medfly infestation. Texas' quarantine, by applying to fruits and vegetables grown anywhere in California, thus restricts the movement of products that are grown far beyond the area of infestation. This restriction imposes a heavy burden on California's agricultural industry, and on the California economy. Thus, California will suffer greatly if this Court fails to grant interim relief. Texas will not suffer in the converse situation.

CONCLUSION

California has a vital interest in eradicating the Medfly infestation, for that infestation poses a paramount threat to California's own agricultural industry. Thus, there is no reason to believe that California will fail to exercise the greatest diligence, or spare any of its energy or resources, in the effort to combat and

eradicate this formidable threat. Since California stands to suffer the most, it can be expected to work the hardest to eliminate the problem.

For the above reasons, it is respectfully requested that this Court grant California's motion for leave to file complaint, application for temporary restraining order and motion for preliminary injunction.

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DATED: FEBRUARY 22, 1981

Respectfully submitted,

GEORGE DEUKMEJIAN, Attorney General
of the State of California

R. H. CONNETT
Assistant Attorney General

RODERICK E. WALSTON
GREGORY K. WILKINSON
CHARLES W. GETZ IV
DAVID HAMILTON
M. ANNE JENNINGS
MARY HACKENBRACHT
Deputy Attorneys General

By Roderick E. Walston
RODERICK E. WALSTON
Deputy Attorney General

APPENDIX A

Section 8, Federal Plant Quarantine Act, 7 U.S.C. § 161.

"§ 161. Interstate quarantine; shipments or removals from quarantined localities forbidden; regulations by Secretary for shipment, etc., from quarantined localities; notice and hearings; promulgation.

"The Secretary of Agriculture is authorized and directed to quarantine any State, Territory, or District of the United States, or any portion thereof, when he shall determine that such quarantine is necessary to prevent the spread of a dangerous plant disease or insect infestation, new to or not theretofore widely prevalent or distributed within and throughout the United States. No person shall ship or offer for shipment to any common carrier, nor shall any common carrier receive for transportation or

transport, nor shall any person carry or transport from any quarantined State or Territory or District of the United States, or from any quarantined portion thereof, into or through any other State or Territory or District, any class of nursery stock or any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products or any class of stone or quarry products, or any other article of any character whatsoever, capable of carrying any dangerous plant disease or insect infestation, specified in the notice of quarantine except as hereinafter provided. It shall be unlawful to move, or allow to be moved, any class of nursery stock or any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products, or any class of stone or quarry products or any other article of any character whatsoever, capable of carrying

any dangerous plant disease or insect infestation, specified in the notice of quarantine hereinbefore provided, and regardless of the use for which the same is intended, from any quarantined State or Territory or District of the United States or quarantined portion thereof, into or through any other State or Territory or District, in manner or method or under conditions other than those prescribed by the Secretary of Agriculture. It shall be the duty of the Secretary of Agriculture, when the public interests will permit, to make and promulgate rules and regulations which shall permit and govern the inspection, disinfection, certification, and method and manner of delivery and shipment of the class of nursery stock or of any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products, or any class of stone

or quarry products, or any other article of any character whatsoever, capable of carrying any dangerous plant disease or insect infestation, specified in the notice of quarantine hereinbefore provided, and regardless of the use for which the same is intended, from a quarantined State or Territory or District of the United States, or quarantined portion thereof, into or through any other State or Territory or District: Provided, That before the Secretary of Agriculture shall promulgate his determination that it is necessary to quarantine any State, Territory, or District of the United States, or portion thereof, under the authority given in this section, he shall, after due notice to interested parties, give a public hearing under such rules and regulations as he shall prescribe, at which hearing any interested party may appear and be heard,

either in person or by attorney: Provided further, That until the Secretary of Agriculture shall have made a determination that such a quarantine is necessary and has duly established the same with reference to any dangerous plant disease or insect infestation, as hereinabove provided, nothing in this chapter shall be construed to prevent any State, Territory, Insular Possession, or District from promulgating, enacting, and enforcing any quarantine, prohibiting or restricting the transportation of any class of nursery stock, plant, fruit, seed, or other product or article subject to the restrictions of this section, into or through such State, Territory, District, or portion thereof, from any other State, Territory, District, or portion thereof, when it shall be found, by the State, Territory, or District promulgating or enacting the same, that such

dangerous plant disease or insect infestation exists in such other State, Territory, District, or portion thereof: Provided further, That the Secretary of Agriculture is authorized, whenever he deems such action advisable and necessary to carry out the purposes of this chapter, to cooperate with any State, Territory, or District, in connection with any quarantine, enacted or promulgated by such State, Territory, or District, as specified in the preceding proviso: Provided further, That any nursery stock, plant, fruit, seed, or other product or article, subject to the restrictions of this section, a quarantine with respect to which shall have been established by the Secretary of Agriculture under the provisions of this chapter shall, when transported to, into, or through any State, Territory, or District, in violation of such quarantine, be subject to

the operation and effect of the laws of such State, Territory, or District, enacted in the exercise of its police powers, to the same extent and in the same manner as though such nursery stock, plant, fruit, seed, or other product or article has been produced in such State, Territory, or District, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."